

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WISMETTAC ASIAN FOODS, INC.
Employer

and

Case 21-RC-204759

FOOD, INDUSTRIAL & BEVERAGE
WAREHOUSE, DRIVERS AND CLERICAL
EMPLOYEES UNION LOCAL 630,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS
Petitioner

ORDER

The Employer's Request for Review and Remand of the Regional Director's Decision to Overrule the Employer's Exceptions and Overrule the Union's Exceptions, Adopt the Administrative Law Judge's Recommendations and Certification of Representative is denied as it raises no substantial issues warranting review.¹

JOHN F. RING, CHAIRMAN

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

¹ In denying review with respect to those classifications that were explicitly permitted to vote subject to challenge, we do not rely on the Administrative Law Judge's or Regional Director's application of the three-step analysis set forth in *Caesars Tahoe*, 337 NLRB 1096 (2002). Where, as here, a stipulated election agreement explicitly permits certain job classifications to vote subject to challenge and where, as here, the non-petitioning party contends that those classifications must be included in the unit in order for it to be appropriate, the proper analysis to apply in assessing the bargaining-unit status of voters in those job classifications is the community-of-interest analysis set forth in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017). As the Administrative Law Judge and Regional Director ultimately applied a community-of-interest analysis under the *Caesars Tahoe* test, however, and as the Employer's request for review makes no argument with respect to that analysis, this error does not warrant granting review.

We also observe that the RD misstated the judge's findings in his decision. He mistakenly stated that the judge found that Logistics Office Clerks lacked a community of interest with the employees included in the Unit. Rather, the judge found that Logistics Office Clerks were functionally Warehouse Clerks included in the Unit. Nevertheless, the RD later correctly stated that the judge found Logistics Office Clerks were part of the Unit. Further, we note that the RD inadvertently referred to "Inventory Control Employees" instead of "Purchasing Clerks," in affirming the judge's finding that Purchasing Clerks were not eligible to vote. Neither of these inadvertent errors affects our decision to deny review.

Dated, Washington, D.C., September 4, 2020